



## **MINUTES**

**CITY OF SCOTTSDALE POLICE LOCAL BOARD OF THE  
PUBLIC SAFETY PERSONNEL RETIREMENT SYSTEM (PSPRS)  
SPECIAL MEETING  
11:30 a.m., Tuesday, February 15, 2011  
Human Resources Verde Conference Room  
7575 E. Main Street  
Scottsdale, Arizona 85251**

**PRESENT:** Jack Cross, Chairman/Mayoral Designee  
James Butera, Elected Member  
Velicia McMillan, Citizen Member/Merit Head  
Jeffrey Walther, Elected Member

**ABSENT:** Jeffrey Burg, Citizen Member

**STAFF:** Colleen Barraza  
Ken Nemec  
Chanda Washington

**OTHER:** Michael Anthony, Esq.  
Police Officer Frank McCleary  
Mrs. Carolyn McCleary  
Dr. Singh (by telephone)

### **Call to order**

Chairman Cross called the meeting to order at 11:35 a.m. He stated that the first order of business was the acknowledgement of Board Member Burg's excused absence.

### **Roll call**

A formal roll call confirmed the members present as stated above.

#### **1. Discussion and Vote on the Accidental Disability Retirement Application of Police Officer Frank McCleary**

Ms. Washington reported that Officer McCleary was applying for an accidental disability retirement related to his work-related left shoulder injury. She stated that

the Board sent him for an IME in August of 2010 and the IME report indicated that his injury did not permanently prevent him from doing the duties of his job.

Ms. Washington recalled Officer McCleary's testimony during the Board's October 21, 2010 meeting wherein he expressed his concerns about the safety of fellow police officers and citizens during the apprehension of suspects. He pointed out that his lack of full mobility in his left shoulder caused him to hesitate in certain situations. During that meeting the Board directed staff to arrange a second IME for Officer McCleary through Medical Consultants Network.

Board Member Walther recalled that the Board's decision to send Officer McCleary for a second IME was also a result of the conflict between the first IME doctor's report when compared to the worker's compensation doctor's report which indicated that the Applicant could return to work as long as he did not participate in any defensive tactics, which would therefore make him ineligible to be a police officer.

Chairman Cross stated that it was still difficult to determine whether Officer McCleary was capable to return to duty as a result of the second IME doctor's response to question number one:

1. Does Mr. McCleary have a physical or mental condition which totally prevents him from performing a reasonable range of duties within the employee's description?

Dr. Singh responded, "Mr. McCleary is able to perform a reasonable range of duties within his job description but he does have a physical condition that would make it unsafe for him to be in a situation where it is necessary to perform actual physical contact such as to subdue or arrest unruly persons that would involve physical or deadly force.

"Also, the defensive tactics training program is quite physical and it does require a lot of straining of the shoulder in very unnatural position and I feel he should not participate in this form of training."

Chairman Cross invited the Board members to express their views on whether Officer McCleary was capable of returning to duty after reading the second IME doctor's response to the questionnaire.

Board Member Walther explained that Officer McCleary could only complete eight out of ten job requirements, pointing out that he could not complete the most important requirements, which involve arresting suspects and participating in defensive tactics.

He noted that the doctor confirmed that Officer McCleary does have instability of the left shoulder which permanently prevents him from performing all the duties required of a police officer. This could potentially place him and his fellow police officers in jeopardy while on the job.

Chairman Cross summarized that questions three and four state:

3. Do you feel that it was incurred in the performance of his duties?

Dr. Singh responded, "Mr. McCleary's disabling condition is a result of the injury incurred in performance of his duty as a police officer that he sustained on March 31, 2001."

4. Does Mr. McCleary's disability result from a physical condition or injury that existed or occurred before the claimant's date of membership in the PSPRS?

Dr. Singh responded, "I do not feel that Mr. McCleary's disability resulted from a physical condition or injury that existed or occurred before the claimant's date of membership in the PSPRS."

He inquired whether the Board would like to obtain legal counsel in Executive Session regarding clarification of what is a reasonable range of duties within an employee's department. It was the consensus of the Board and Mr. Anthony to continue the discussion in open session.

Chairman Cross said in this situation a reasonable range of duties would include the job requirements that the doctor says Officer McCleary cannot do. Board Members agreed that defensive tactics and arresting capabilities are essential components of being a police officer.

Mr. Anthony suggested informing the doctor during his interview that the Scottsdale Police Department's reasonable range of duties includes the ability to physically arrest combative suspects as well as protecting the public and other police officers from such suspects, pointing out that there are no permanent positions that allow a police officer to avoid those duties.

Board Member Butera explained that the job description essential functions include making arrests, searching suspects, and assisting citizens who have been in accidents. He noted that one of the work environment demands was to lift and move 160 pounds for long distances with or without assistance.

Mr. Anthony opined that the second IME may be a civilian doctor who simply does not understand that if a situation calls for these abilities the Applicant must be able to perform them without assistance.

Board Member Butera commented that even as a detective Officer McCleary could be called on to hit the road for mobile field force duties for a major incident.

Board Member McMillan stated that the Board must provide the doctor with an opportunity to really understand what the essential functions of a police officer are, and that there are no positions that would allow the Applicant to perform his duties without those essential functions.

Mr. Anthony explained that many doctors do not understand the nuances of the various duties in different departments or the lack of light duty positions. The Phoenix Police Department is a very large organization and some positions are set aside for permanent light duty.

**Telephonic Interview of Dr. Singh**

Board Member Walther informed Dr. Singh that the essential functions of a police officer include confronting suspects, making arrests, and participating in defensive tactics. He inquired whether Officer McCleary would be able to perform his duties if these essential functions were necessary.

Dr. Singh confirmed that if the Applicant's duties require the apprehension of suspects, getting into physical fights, or subduing assailants then he should not participate in those activities.

In response to Chairman Cross' inquiry whether Officer McCleary would be able to complete a reasonable range of duties within his department, Dr. Singh confirmed that he could not do that. He elaborated that some employers had told him in the past that those functions were not essential, indicating that the employee could adjust to a desk with occasional physical activities.

Dr. Singh explained that should a police officer be required to complete those essential functions then he should not be a police officer or detective.

Chairman Cross clarified that some departments do offer light duty employment, although the Scottsdale Police Department has no such positions.

Chairman Cross invited Officer McCleary to offer further input if necessary and he stated that he had nothing further to add at this time.

**BOARD MEMBER WALTHER MOVED TO FIND THAT THE APPLICANT HAS A PHYSICAL OR MENTAL CONDITION WHICH TOTALLY AND PERMANENTLY PREVENTS HIM FROM PERFORMING A REASONABLE RANGE OF DUTIES WITHIN THE POLICE OFFICER CLASSIFICATION. BOARD MEMBER BUTERA SECONDED THE MOTION, WHICH CARRIED BY A VOTE OF FOUR (4) TO ZERO (0). BOARD MEMBER BURG WAS ABSENT.**

**BOARD MEMBER WALTHER MOVED TO FIND THAT THE APPLICANT'S DISABLING CONDITION WAS INCURRED IN THE PERFORMANCE OF HIS DUTIES AS A POLICE OFFICER. BOARD MEMBER MCMILLAN SECONDED THE MOTION, WHICH CARRIED BY A VOTE OF FOUR (4) TO ZERO (0). BOARD MEMBER BURG WAS ABSENT.**

**BOARD MEMBER WALTHER MOVED TO FIND THAT THE APPLICANT'S DISABILITY DID NOT RESULT FROM A PHYSICAL OR MENTAL CONDITION OR INJURY THAT EXISTED OR OCCURRED PRIOR TO THE APPLICANT'S DATE OF MEMBERSHIP IN PSPRS, WHICH IS JANUARY 21, 1998. BOARD MEMBER MCMILLAN SECONDED THE MOTION, WHICH CARRIED BY A VOTE OF FOUR (4) TO ZERO (0). BOARD MEMBER BURG WAS ABSENT.**

**BOARD MEMBER WALTHER MOVED TO APPROVE THE ACCIDENTAL DISABILITY RETIREMENT PENSION OF POLICE OFFICER FRANK MCCLEARY SUBJECT TO FINAL PAYROLL CALCULATIONS AND QUALIFIED DOMESTIC RELATIONS ORDERS. BOARD MEMBER MCMILLAN SECONDED THE MOTION,**

**WHICH CARRIED BY A VOTE OF FOUR (4) TO ZERO (0). BOARD MEMBER BURG WAS ABSENT.**

**CLOSED PUBLIC HEARING**

**2. Motion to Recess into Executive Session for Discussion of the A.R.S. Sec. 38-844 Retirement Application of Police Officer Frank McCleary**

Chairman Cross deemed it unnecessary to recess into Executive Session.

**RECONVENE PUBLIC SAFETY PERSONNEL RETIREMENT SYSTEM MEETING FOLLOWING EXECUTIVE SESSION**

**3. Board Suggestions for Upcoming Agenda Items.**

In response to Board Member Butera's inquiry regarding the status of Police Lieutenant Craig E. Chrzanowski, Ms. Washington reported that staff was waiting for the results of his IME.

Chairman Cross confirmed that there were no Board suggestions for future agenda items at this time.

**ADJOURNMENT:**

With no further business to discuss, being duly moved and seconded, the meeting adjourned at 12:12 p.m.

Respectfully Submitted by:

REVIEWED BY:

Ken Nemec  
PSPRS Police Local Board Secretary

Jack Cross  
PSPRS Chairman/Mayoral Designee